



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,562	03/25/2004	Ken Ueno	05225.0261	4855
22852	7590	05/14/2008	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			NAQI, SHARICK	
		ART UNIT	PAPER NUMBER	3736
		MAIL DATE	DELIVERY MODE	05/14/2008 PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/808,562	UENO ET AL.	
	Examiner	Art Unit	
	Sharick Naqi	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 15 January 2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

The Examiner acknowledges the amendment filed on January 15, 2008.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Mault et al. US Patent Number 6,513,532 (hereinafter Mault), which incorporates by reference Mault US Patent Number 6,478,736 (hereinafter Mault 736).

1. An apparatus for supporting a user's behavior, comprising:
a behavior schedule database configured to store a schedule for the user, the schedule including a date, a start time, an end time, a behavior label, and a route schedule, the user schedule being created based on the user's intent (Mault Fig. 5 and 7, Mault 736 column 11, lines 5-17);
an integrated behavior database generation unit (Mault column 4, lines 46-51) configured to generate an integrated behavior database correspondingly storing a biomedical information and a behavior information of the user (Mault 736 column 6, lines 39-45, Mault column 8, lines 6-7), the biomedical information being detected by a sensor associated with the user's body (Mault column 3, lines 46-53), the behavior

information including the user's actual behavior in the past (Mault 736, column 11, lines 5-57);

 a behavior rule generation unit configured to generate a behavior rule of the user by referring to the integrated behavior database, the behavior rule representing a tendency of the user's behavior in the past (Mault 736 column 11, lines 5-57);

 a behavior schedule reorganization unit configured to reorganize the user schedule by referring to the behavior rule, wherein at least the route schedule is reorganized, an exercise being inserted into a time segment of the reorganized route schedule (Mault Fig. 5 and 7, column 9, lines 30-67, column 10, lines 1-33, Mault 736 column 11, lines 5-57);

 a message generation unit configured to generate a message to urge the user to do the exercise via the reorganized route schedule by referring to the reorganized user schedule (Mault Fig. 5, column 9, lines 30-67, column 10, lines 1-33, Mault 736 column 10, lines 36-37, column 11, lines 5-57); and

 a message notice unit configured to notify the user of the message (Mault 736 column 11, lines 5-57).

2. The apparatus according to claim 1, wherein the behavior information comprises a behavior database (Mault 736 column 6, lines 34-37), and a feeling description database (Mault 736, column 8, lines 30-50).

3. The apparatus according to claim 2, wherein the behavior database correspondingly includes a date, a start time, an end time, a start point, an end point, a user name, a behavior label, and a route (Mault Figs. 5 and 7, Mault 736 column 9, lines 45-65).

4. The apparatus according to claim 3, wherein the feeling description database correspondingly includes a date, a start time, an end time, a user name, and a feeling description (Mault fig. 5, column 5, lines 39-43, Mault 736 column 8, lines 30-50).

5. The apparatus according to claim 4, wherein the behavior schedule database correspondingly includes a number of steps estimated by said behavior schedule reorganization unit (Mault column 2, lines 37-40, Mault 736 column 9, lines 45-65).

6. The apparatus according to claim 5,
wherein the biomedical information comprises a sensor database (Mault column 8, lines 6-7, memory for storage of data, Mault 736, column 12, lines 22-37), and
wherein the sensor database correspondingly includes a date, a start time, an end time, a measurement value of the sensor at the start time, and a measurement value of the sensor at the end time (Mault column 7, lines 14-16, Mault 736, column 12, lines 22-37).

7. The apparatus according to claim 6, wherein said integrated behavior data generation unit (Mault column 4, lines 46-51) merges information of the behavior database, the feeling description database (Mault 736, column 8, lines 30-50) and the behavior schedule database for the same user, the same date, the same start time and the same end time, and generates the merged information as the integrated behavior database (Mault column 9, lines 27-29, column 14, lines 8-13).

8. The apparatus according to claim 1,
wherein said behavior rule generation unit extracts the tendency of the user's behavior from information of the integrated behavior database, modifies the extracted information as a rule having condition and result, and generates the rule as a behavior rule database (Mault column 4, lines 46-51, column 9, lines 27-29, column 14, lines 8-13, Mault 736 column 8, lines 30-50).

9. The apparatus according to claim 1, further comprising
a relational database configured to store a conception dictionary dataset, a behavior label set, a calendar weather data set, a route data set, a location data set, and a map dataset, (Mault column 4, lines 18-23, column 9, lines 30-56) and
wherein said integrated behavior data generation unit adds information to the integrated behavior database by referring to each set of the relational database (Mault column 9, lines 27-29, column 14, lines 8-13).

10. The apparatus according to claim 8, wherein said behavior schedule reorganization unit reorganizes the route schedule so that an estimated number of steps is constantly above a target value of a number of steps (Mault column 2, lines 37-40, Mault 736 column 9, lines 45-65).

11. The apparatus according to claim 10, further comprising a behavior advice (Mault 736 column 11, lines 15-18) database configured to store the message in correspondence with the behavior rule (Mault column 8, lines 6-7).

12. The apparatus according to claim 1, further comprising, an advice evaluation input unit configured to input an evaluation for the message from the user (Mault column 11, lines 27-33, Mault 736 column 11, lines 45-57), and an advice evaluation database configured to store the evaluation in correspondence with the message (Mault column 11, lines 29-46).

13. The apparatus according to claim 12, further comprising an exercise constraint condition rule database configured to correspondingly store the behavior rule and the evaluation (Mault column 11, lines 27-33), and wherein said message generation unit generates a message by referring to the exercise constraint condition rule database (Mault column 8, lines 6-7 column 14, lines 8-13 Mault 736 column 6, lines 34-37).

14. The apparatus according to claim 5, further comprising a data interface unit configured to input the feeling description and the behavior schedule data from the user (Mault fig. 5, column 4, lines 46-51, column 7, lines 64-66).

15. The apparatus according to claim 14, wherein said data interface unit interactively inputs a status data of the user's moving by the user's indication, and records the status data as the user's behavior in time series (Mault column 8, lines 47-65).

16. The apparatus according to claim 15, wherein said data interface unit outputs a behavior graph of the user by using the recorded status data in time series (Mault fig. 5, column 9, lines 30-33).

17. The apparatus according to claim 13, further comprising a database share unit configured to share information of the integrated behavior database and the exercise constraint condition rule database among a plurality of users (Mault column 5, lines 44-49, column 8, lines 6-7, Mault 736 column 10, lines 31-36).

18. The apparatus according to claim 6, further comprising a location detection unit configured to detect the user's location information (Mault column 8, lines 47-54), and

wherein the integrated behavior database (Mault column 8, lines 6-7. Memory (42) for storage of data) correspondingly stores the biomedical information (Mault 736 column 6, lines 39-45), the behavior information and the location information (Mault column 8, lines 47-65).

Claims 19 and 20 are rejected on substantially the same basis as claim 1

Response to Arguments

Applicant's arguments with respect to claims 1-20 filed on January 15, 2008 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed on July 2, 2007 have been fully considered but they are not persuasive.

Applicant argues that Mault and Mault 736 do not meet the limitation of "a behavior schedule reorganization **unit configured to** reorganize the user schedule by referring to the behavior rule, wherein at least the route schedule is reorganized, an exercise being inserted into a time segment of the reorganized route schedule."

The Examiner respectfully disagrees. The broadest reasonable interpretation of a 'unit' as described in pages 14 and 15 of the specification is that a unit is just software without any structure. Thus the behavior schedule reorganization unit has been given minimal patentable weight because it lacks structure that would be attributed to the apparatus claims.

Additionally "configured to" is indicative of intended use/functional language.

Intended use/functional language does not require that reference specifically teach the intended use of the element. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

It is the Examiner's position that Mault and Mault 736 are capable of performing the intended use. Mault Fig. 5 shows that the system serves as a log recording the user's daily schedule including their location such as home, office, gym and running routes at various times during the day using GPS, this is equivalent to a user schedule/user route schedule. Mault 736 teaches in column 11, lines 5-57 that feedback is provided to the user based on previously collected activity levels, this is equivalent to a behavior rule. Upon receiving feedback regarding their previously recorded activity levels, a user could decide to change his activities for the next day by observing the previous logs to find time to go to the gym more often, exercise at different times during a day or exercise more by running longer distances. The resulting change in the user's daily schedule would be automatically stored in a new daily log as the user acts upon his decisions and would be equivalent to reorganizing a user schedule, reorganizing a route schedule and inserting an exercise into a reorganized route schedule. Thus Mault meets the limitation of a behavior schedule reorganization unit.

Applicant further argues that Mault and Mault 736 do not disclose “a message generation **unit configured to** generate a message to urge the user to do the exercise via the reorganized route schedule by referring to the reorganized route schedule.”

The Examiner respectfully disagrees. “[U]nit” has been interpreted as software and “configured to” in the limitation has been interpreted as intended use/functional language, see explanation provided above for the behavior schedule reorganization unit.

It is the Examiner’s position that Mault and Mault 736 are capable of performing the intended use. Mault 736 teaches in column 11, lines 5-57 that feedback is provided to the user based on previously collected activity levels. Previously collected activity levels are stored as a daily log shown in Mault Fig. 5. As explained for the behavior schedule reorganization unit, the reorganized user/route schedules are stored in the daily log after a user reacts to feedback. The next round of feedback generated would be based on the previously collected activity levels that correspond with the reorganized user/route schedules stored in the log. If the feedback based on the reorganized user/route schedule is positive, the new level of activity is sufficient and there is no need for a schedule change, thus this feedback is sufficient to reject the limitation of a message to urge the user to do the exercise via the reorganized route schedule by referring to the reorganized route schedule.

The Applicant is invited to request an interview to discuss suggestions to overcome the applied prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharick Naqi whose telephone number is (571)272-3041. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. N./
Examiner, Art Unit 3736

/Michael Astorino/
Primary Examiner, Art Unit 3736

May 9, 2008